

FILED
Clerk
District Court

MAY 22 2008

For The Northern Mariana Islands
By _____
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

CYNTHIA ATTAO,)	Civil No. 08-0018
)	
Plaintiff)	
)	
v.)	ORDER GRANTING
)	DEFENDANT'S MOTION
TINIAN SHIPPING AND)	TO DISMISS, WITH
TRANSPORTATION, INC.,)	LEAVE TO AMEND
)	
Defendant)	
_____)	

THIS MATTER came before the court on Thursday, May 22, 2008, for hearing of defendant's motion to dismiss. Plaintiff appeared by and through her attorney, Victorino DLG Torres; defendant appeared by and through its attorney, G. Anthony Long.

THE COURT, having considered the written and oral arguments of counsel, rules as follows.

1 Defendant has moved to dismiss the complaint pursuant to Rule 12(b)(6) of
 2 the Federal Rules of Civil Procedure. Rule 12(b)(6) permits dismissal of a claim either
 3 where that claim lacks a cognizable legal theory, or where insufficient facts are alleged
 4 to support plaintiff's theory. *See Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th
 5 Cir. 1990). In resolving a Rule 12(b)(6) motion, the Court must construe the
 6 complaint in the light most favorable to the plaintiff and accept all well-pleaded
 7 factual allegations as true. *See Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337–38 (9th
 8 Cir. 1996). However, as stated recently by the Supreme Court, to survive a Rule
 9 12(b)(6) motion a complaint must contain factual allegations sufficient “to raise a
 10 right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, ____ U.S. ____,
 11 127 S. Ct. 1955, 1965 (2007).

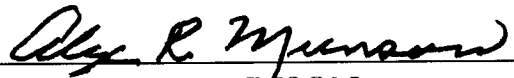
12 Here, the court concludes that plaintiff's complaint pleads insufficient facts¹ to
 13 make out a claim for relief under either the Americans With Disabilities Act
 14 (“ADA”), 42 U.S.C. §12101 *et seq.*, or the Civil Rights Act of 1964, 42 U.S.C. § 2000e
 15 *et seq.* The complaint fails to make out a cognizable legal theory, particularly as to the
 16 ADA claim, even construing the complaint in the light most favorable to plaintiff.

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For example, it was not until the hearing that the court learned that plaintiff had been denied boarding and was required to stay overnight in Tinian.

1 Accordingly, defendant's motion to dismiss the complaint is granted, and
2 plaintiff shall have until **3:30 p.m., Friday, June 6, 2008**, to file a first amended
3 complaint. The court reminds the parties of the admonition of 42 U.S.C. § 12212
4 that parties to ADA claims should first avail themselves of alternative dispute
5 resolution procedures. Upon joint request of the parties, the court stands ready to
6 assist in resolution of this matter.
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9 DATED this 22nd day of May, 2008.
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14 ALEX R. MUNSON

15 Judge
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